FUNDAMENTAL LIBERTIES IN THE CONSTITUTION OF IRELAND

The considerable discussion of the problem of civil rights enforcement which has taken place in the United States since the end of World War II,[1] the legislation which has been introduced in the Parliament of Canada for the recognition of human rights and fundamental rights and freedoms,[2] coupled with the fact that an important part of the Federation of Malaya constitution is devoted to an enumeration of fundamental liberties,[3] stimulates the present writer to examine the way in which such problems have been treated in one of the smaller European democracies. Ireland, which (under various descriptive titles)[4] has enjoyed an independent political existence since 1922, has, in common with many modern states, a written constitution. It is a unitary state and it might be assumed that the tasks confronting the framers of the present Irish constitution were simple ones. Unlike the situation in a federation, in a unitary state no complicated problems as to the distribution of powers arise. At the same time, however, the draftsmen in such a situation have their own problems, for most modern constitutions take the opportunity of incorporating fundamental rights which the citizen is deemed to possess — personal freedom, equality before the law, freedom of speech, and so on. In each case, the precise scope of such rights depends to a large extent on the political philosophy underlying the state itself. Difficulties arise because of the fact that there is seldom any measure of agreement on the vexed question of the nature and extent of these rights, and the qualifications which must attach to their exercise. It is the object of this paper to examine the way in which these qualifications have been interpreted by the courts in Ireland.

THE BACKGROUND

The forerunner of the state now known as "Ireland"[5] or "The Republic of Ireland"[6] was the Irish Free State, which came into existence pursuant to the Anglo-Irish Agreement of 1921.[7] This instrument provided that the new state was to have the same constitutional status

1. *E.g.* Emerson and Haber, *Political and Civil Rights in the United States* (1952); Schwartz, *American Constitutional Law* (1955), Chap. X; 37 *Canadian Bar Review* 1-216 (1959).
2. 37 *Can. B.R.* 1-216 (1959).
3. L. A. Sheridan in 1 *Univ. of Malaya L. R.* 175-187 (1959).
4. V. T. H. Delany in 12 *Univ. of Toronto L. J.* 1, 2 (1957).
5. Constitution of Ireland, 1937, Article 4.
6. Republic of Ireland Act, 1948, s. 2: "It is hereby declared that the description of the State shall be the Republic of Ireland." *Cf.* "'Eire' as the Name of the State," 11 *Irish Jurist* 5 (1950).
7. *Cf.* 12 *Univ. of Toronto L. J.* 1 (1957).

as the existing Dominions and, in particular, that the position of the Irish Free State in relation to the British Parliament and Government was to be that of the Dominion of Canada. The Agreement was duly ratified by the revolutionary Irish legislature and by the British Parliament, and the former body then proceeded to draft a constitution which was enacted by it and by the British Parliament. By section 2 of the Irish statute, the Agreement of 1921 became part of the fundamental law of the Irish Free State, and could not be altered.

This constitution of 1922 set out in comprehensive terms a number of guarantees to the individual which were, in effect, a recapitulation of the various principles of the common law already embodied in such documents as Magna Carta and the Bill of Rights. Article 16 of the Anglo-Irish Agreement had already contained a limited provision in this connection, but the new constitution was much more elaborate. Thus, "the liberty of the person is inviolable;" and he could not be detained or imprisoned except in accordance with law (Article 6). His dwelling was inviolable and might not be forcibly entered except in accordance with law (Article 7). Freedom of conscience and free profession and practice of religion were, subject to public order and morality, guaranteed to every citizen, and the right of free expression of opinion as well as the right of peaceable assembly were guaranteed (Article 9). Further, Article 64 provided that the judicial power should be exercised and justice administered in public courts; the right of trial by jury was preserved (Article 72) ; and Parliament was to have no power to create offences *ex post facto*. Finally, "no one shall be tried save in due course of law and extraordinary courts shall not be established, save only such military tribunals as may be authorised by law for dealing with military offenders against military law". (Article 70).

The Irish Free State constitution thus contained a detailed list of what were regarded by its framers as being fundamental rights, together with adequate machinery for their protection and maintenance. So far as amendment was concerned, the constitution itself provided that for the first eight years of its operation it could be changed by ordinary legislation but, thereafter, a referendum of the citizens would be necessary. In 1928, however, Parliament passed an amendment by ordinary legislation extending this period to sixteen years.

The implication of these constitutional declarations first underwent a comprehensive judicial examination in the Supreme Court of the Irish Free State in 1934.[8] The question at issue arose on an application for habeas corpus against the governor of a military prison in which the applicants were being detained awaiting trial by order of a military tribunal, set up under the Constitution (Amendment No. 17) Act, 1931. This statute, which was to operate as an amendment to the constitution,

8. *State (Ryan)* v. *Lennon* [1935] I.R. 170.

created a number of offences, and provided for the establishment of a special tribunal to try persons charged with these offences and to inflict such penalties, including death, as it should think expedient. Certain parts of the statute were to apply retrospectively to acts already committed; there was to be no appeal to the ordinary courts; and special powers of arrest were given to the police, whose evidence as to certain matters was to be treated as conclusive by the courts.

The Supreme Court was asked to say, first, whether the legislature had power to alter any part of the constitution at will, including the Article governing the power to amend and, secondly, whether the fundamental rights enumerated in the constitution itself were immutable. The majority of the members of the court, FitzGibbon and Murnaghan JJ., took the view that the first question must be answered in the affirmative and the second in the negative. Kennedy C.J. dissented, on the ground that when the constitution was read as a whole, it led to the conclusion that "amendment" in the relevant clause meant amendment in detail, and did not extend to the amendment clause itself. Further, he took the view that the "fundamental rights" clauses were not capable of being changed and that the legislation under review was both invalid as an amendment and incapable of being validly enacted under the constitution, "as repugnant to the Natural Law and therefore repugnant to the source of power and authority acknowledged.... as fundamental."

The judgment of FitzGibbon J. was based on another view. After a preliminary examination of the theories of such political philosophers as Rousseau, Paine, Burke, Bentham and Locke, he proceeded to examine the constitutional arrangements in Sweden, Austria, France, the United States, Poland, Esthonia and Mexico. This survey led him to the conclusion that, in reality, there was no general agreement on essential constitutional guarantees, though the constitutions of the countries concerned esteemed them so highly as to declare them to be "fundamental," "constitutional," "inalienable," "guaranteed," or "inviolable." In every case they were subject to qualifications and so in the Irish Free State, "the liberty of the person is inviolable" — "except in accordance with law." The statute impugned had been enacted in accordance with law and, as FitzGibbon J. put it, "the fact that the constitutions of other countries prohibit such invasions of the rights of liberty and property, and such extraordinary innovations in the methods of administering justice in criminal cases as have been introduced into our Constitution by Amendment No. 17, affords no ground for condemning as unconstitutional in this country, or as contrary to any inalienable rights of an Irish citizen, an enactment which appears to have received the almost unanimous support of [Parliament]..." In other words, he thought, if there were no such things as natural rights, there could not be any in the constitution of the Irish Free State.

THE CONSTITUTION OF 1937

The process whereby the Irish Free State retreated from full "Dominion status" to the position of a sovereign independent republic outside the Commonwealth falls outside the scope of the present analysis, [9] but it is necessary to observe that in the course of this withdrawal, the Irish legislature introduced a new constitution, which came into force on December 29, 1937. This constitution was prepared by the Irish Free State government; it was approved (not enacted) by Parliament; and it was then passed by a majority of the electorate at a referendum.[10]

The 1937 constitution established a new state, called *Eire* or, in the English language, "Ireland," the national territory of which consists of the whole island of Ireland. Out of deference to the political realities of the situation, however — namely, the existence of Northern Ireland as an integral part of the United Kingdom — the laws enacted by the Irish Parliament were to have the same area and extent of application as the laws of the Irish Free State. The whole constitution is democratic and republican in structure and, as in the case of its predecessor, full provision is made for fundamental rights declarations. In addition, on the analogy of the constitution of India, there are certain "directive principles of social policy," which did not appear in the earlier document.

The "fundamental rights" clauses are to be found in Articles 40 to 44, and they deal with personal rights, the family, private property, education and religion.

(1) PERSONAL RIGHTS

Here, we find repeated the statement that "no citizen[11] shall be deprived of his liberty save in accordance with law," (Article 40(4) (i)), and "the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law." Article 40(5)). Once again, the qualification "save in accordance with law" appears, and we are left in the dark as to its precise meaning. In 1939, the Irish Parliament passed legislation (of a permanent type) empowering the appropriate authority to order the arrest and detention without trial of persons guilty of certain subversive behaviour. [12] The Supreme Court was asked to determine whether this legislation was valid having regard to the constitutional guarantees. In answering the question in favour of its

9. *Cf.* 12 *Univ. of Toronto L.J.* 1-26 (1957).

10. K. C. Wheare, *The Statute of Westminster and Dominion Status* (1953), p. 276.

11. Article 40 is confined to "citizens," though the *habeas corpus* provisions extend to "any person."

12. Offences Against the State Act, 1939; Offences Against the State (Amendment) Act, 1940.

validity,[13] the court said : "The duty of determining the extent to which the rights of any particular citizen, or class of citizens, can properly be harmonized with the rights of the citizens as a whole seems to us to be a matter which is peculiarly within the province of... [Parliament].., and any attempt by this Court to control... [Parliament]... in the exercise of this function, would, in our opinion, be a usurpation of its authority." The court added : "The phrase 'in accordance with law' is used in several Articles of the Constitution, and we are of opinion that it means in accordance with the law as it exists at the time when the particular Article is invoked and sought to be applied."

During World War II, a number of cases came before the Irish courts in which it was sought to establish that the "fundamental rights" clauses guaranteed certain minimum rights and that the legislature had violated the constitution in failing to observe them. In addition, it was claimed, the right sought to be established — that of habeas corpus — was derived not from the written constitution but from the common law. The constitution did no more than declare the position as it already existed.[14] The claim was rejected. As Maguire J. put it, " This argument involves the propositions that the State has two Constitutions, the one enacted by the people, written and defined; the other unwritten and undefined, and that the latter may be invoked, or called in aid, to the extent even of defeating the clear terms of the Constitution where a conflict real or apparent is alleged between them. There is no authority for these propositions. I am unable to accept this argument. The mischief and inconvenience to which it would lead are obvious. This Court functions under the Constitution and is bound to give effect to its provisions. The authority of the Constitution enacted by the people is paramount. Its clear provisions must be given effect to even though the rights, or some of them now asserted, were to some extent covered by the common law." [15]

The argument put forward in this case was a reiteration of that advanced by Kennedy C.J. in the earlier case arising under an equivalent provision of the Irish Free State constitution,[16] to the effect that there was over-all limitation imposed on the powers of Parliament, derived from a "higher law," and that this limitation prevented the infringement of a number of inviolable individual rights. This argument had been rejected in the earlier case by FitzGibbon and Murnaghan JJ., and their reasoning was now to prevail in the later decisions. In every case the court was compelled to hold that the words in the constitution fully

13. *Re Article 26 of the Constitution and the Offences Against the State (Amendment) Bill, 1940* [1940] I.R. 470.
14. *State (Walsh)* v. *Lennon* [1942] I.R. 112; *Cf. Re McGrath and Harte* [1941] I.R. 68; *Re McCurtain* [1941] I.R. 83.
15. [1942] I.R. 112, 123.
16. *State (Ryan)* v. *Lennon* [1935] I.R. 170, *supra,* footnote 8.

justified the alleged infringement. Rights were declared, it is true, but they were qualified in such a way that the court had no power to intervene.

In the field of personal rights, the fact that the Republic of Ireland has ratified both the European Convention for Human Rights of 1950 and the Protocol of 1952, [17] coupled with the fact the Republic has made the declaration necessary for the purposes of Article 46 of that Convention, recognising the compulsory jurisdiction of the European Court of Human Rights,[18] raises new issues the solution of which is not yet in sight. In at least one case[19] in which habeas corpus proceedings were brought in the Irish courts, it was argued that the adherence of the Republic to the European Convention made the provisions of the Convention part of the municipal law of the Republic. This view was rejected by the Supreme Court, and it was expressly stated that the rights of the citizens derived from the constitution alone and the laws made thereunder, and that the most the Irish courts could achieve was to employ the terms of the Convention to resolve doubtful questions in the domestic system. Where such a conflict arose, the court said, the Convention must give way to the relevant Irish constitutional provisions.

The Republic of Ireland had also, in accordance with Article 25 of the Convention, acknowledged the right of persons, non-governmental organisations and groups of individuals to petition the European Commission on Human Rights against violations of the Convention by one of its signatories. Accordingly, the prosecutor in the Irish case, having exhausted his local remedies, petitioned the Commission claiming that his imprisonment was a violation of his rights. After a protracted exchange of pleadings and an oral hearing at which both the Irish government and the petitioner were represented, the Commission ruled that the case was admissible. A sub-committee was then appointed to establish certain facts and to try to effect a "friendly settlement" under Article 28. This sub-committee heard further evidence and arguments and reported back to the Commission, and the latter body then drew up its report, which at the time of writing is about to be forwarded to the Committee of Ministers and the Secretary-General of the Council of Europe. It remains to be seen whether the Commission will send the case forward to the European Court of Human Rights for hearing.[19a]

(2) THE FAMILY

Article 41 of the Irish constitution recognises the family as "the natural and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior

17. Ireland: Treaty Series, 1953, No. 12 (Pr. 2233).
18. A. H. Robertson, "The European Court of Human Rights," 8 *Int. & Comp. L.Q.* 396 (1959).
19. *State (Lawless)* v. *A.G.* (1957), unreported. MacBride, "The Convention of Human Rights," *Irish Times,* February 12, 13, 1960.
19a. The Commission has now referred the case to the European Court.

to all positive law," and the state guarantees to protect the family as "the necessary basis of social order." In particular, Article 41 (3) (2) provides that "no law shall be enacted providing for the grant of a dissolution of a marriage," while Article 41 (3) (3) states that "no person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved."

The precise meaning of this rather enigmatic provision fell to be considered by the Supreme Court in a recent case coming before it.[20] In the case in question, the plaintiff was granted a decree nisi of divorce in England. The decree was made absolute, both parties being domiciled in England at the time of the suit. Orders for the payment of costs were made arising out of these divorce proceedings and the costs remained unpaid. Meanwhile, the defendant came to reside in the Republic of Ireland, and the plaintiff commenced proceedings in the courts there to recover the amounts due. The defendant raised the plea that the comity of courts did not compel the enforcement of a foreign judgment where the action in which the judgment was obtained was one which could not have been brought in the Republic, and that the order could not be enforced there because, having regard to Article 41(3)(3) of the constitution, it was contrary to public policy.

In the court of first instance, Murnaghan J. thought that since the court in the Republic could not "be expected to lend... active support to the enforcement of a law which it regards as repugnant to the Republic's own distinctive policy . . .," if the orders for costs were not severable from the divorce decree (which he held to be the case), the action must fail.

On appeal, it was argued that all the Article of the constitution did was, in the first place, to prohibit the enactment of divorce legislation, and secondly, to prohibit the remarriage in the Republic of persons whose marriages still subsisted according to Irish law. In other words, when the parties to a marriage became domiciled abroad and obtained a decree of divorce a *vinculo matrimonii* which was valid according to the country of their domicile, such a decree would be recognised as valid in the Irish courts, and so the marriage would be no longer "a subsisting valid marriage" according to Irish law. Accordingly, the divorce decree being so recognised, it would not be against public policy to sue for the costs due thereunder.

20. *Mayo-Perrott* v. *Mayo-Perrott* [1958] I.R. 336; P.R. Webb in 8 *Int. & Comp. L.Q.* 744 (1959).

This view was accepted by Kingsmill Moore J., but he was of opinion that the recognition of such a status did not necessarily involve the proposition that the Irish courts would give effect to all the incidents flowing from it. Irish public policy did not favour divorce and, he thought, the courts would be failing to carry out that policy if they were to assist the appellant in recovering the costs of the divorce suit, even though they recognised her change of status. The other members of the Supreme Court agreed with this conclusion, but some of the judgments contain observations (not all of them *obiter dicta)* which are rather startling in their implications. Thus, Maguire C.J. said of Article 41(3) (3), "Far from recognising the validity of a divorce obtained outside the country it seems to me expressly to deny to such a divorce any recognition for it prohibits the contracting of a valid marriage by a party who has obtained a divorce elsewhere.... It may be that the Constitution recognises that a decree of dissolution of marriage elsewhere may be valid in the country where it has been obtained, but to my mind as I have said it denies it any validity here." The learned Chief Justice had already based his judgment on the clause in the article prohibiting divorce legislation, so these observation were *obiter,* but another member of the court, Maguire J., seemed to think that no foreign decree of divorce was recognisable or enforceable, for he said : "It is clearly repugnant to the laws of Ireland that the decree of dissolution as a whole could be implemented by a judgment of the Courts in this country founded on a judgment of a foreign court. This seems to me so clear that it needs only to be stated. It is incapable of argument."

Although the decision did not turn on the interpretation of Article 41 (3) (3), these divergent judicial views leave the matter very much at large, and it may well be that when the Irish courts have to face the issue, they will be inclined to give the Article its most restrictive meaning.

(3) PRIVATE PROPERTY

Article 43 of the constitution, while it guarantees to enact no law "attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property," contains no general provision against confiscatory legislation analogous to the Fifth and Fourteenth Amendments of the United States constitution. On the contrary, it is provided that "the exercise of the rights [of private ownership] ought.. .to be regulated by the principles of social justice," and that the state may delimit their exercise in accordance with "the exigencies of the common good." As Hanna J. pointed out in one of the cases,[21] "What is social justice in one State may be the negation of what is considered social justice in another State . . . . . The phrases seem to me to be in the nature of political, economic or sociological tags." It

21. *Pigs Marketing Board* v. *Donnelly (Dublin) Ltd.* [1939] I.R. 413, 418, 421.

has been suggested elsewhere[22] that these phrases are probably nothing more than oblique references to the so-called "police power" — expressed in terms of the "directive principles of social policy" laid down in the constitution itself. It has been decided, at all events, that where legislation is designed to expropriate, and cannot be justified by any reference to "the common good" as illustrated by a conflict between public good and the property right concerned, such legislation is void as being repugnant to Article 43.[23] At the same time, it has not been conceded in the Irish decisions that the "principles of social justice" or "the common good" require compensation to be paid for all deprivations of property rights, and the notions of the "due process" and "eminent domain"[24] seem to play no part in the interpretation of the Irish constitution.[25]

(4) EDUCATION AND RELIGION

The various attempts which were made by the British Parliament to confer political autonomy on Ireland over the past seventy years[26] have involved provisions in the relevant legislative documents guaranteeing freedom of conscience and the free profession and practice of religion. These rights are repeated in Article 44 of the 1937 constitution, "subject to public order and morality." The state may not endow any religion; nor impose any disabilities or make any discrimination on the ground of religious profession, belief, or status; nor shall legislation providing state aid for schools discriminate between schools under the management of different religious denominations.

Section 1 of Article 44 provides : "(1) The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion. (2) The State recognises the special position of the Holy Roman Catholic Apostolic and Roman Church as the guardian of the faith professed by the great majority of the citizens." The section goes on to provide that the "State also recognises" certain other religious denominations "existing in Ireland at the date of the coming into operation of this Constitution."

The precise effect of these provisions has yet to be determined, though in one of the cases in which it was raised,[27] the Supreme Court was able to reach a decision without calling it in aid, and. indeed, was

22. V. T. H. Delany in 12 *Univ. of Toronto L.J.* 1, at p. 20 (1957).
23. *Buckley (Sinn Fein)* v. *A.G.* [1950] I.R. 67.
24. Except, apparently, in the case of the diversion of the property of religious and educational institutions: Article 44(2)(6).
25. *Fisher* v. *Irish Land Commission and A.G.* [1948] I.R. 3; *State (Crowley)* v. *Irish Land Commission* [1951] I.R. 250; *Foley* v. *Irish Land* Commission [1952] I.R. 118.
26. A. G. Donaldson in 11 *Univ. of Toronto L.J.* 1-42 (1955); 37 Can. *B.R.* 189 (1959).
27. *Re Tilson, Infants* [1951] I.R. 1. *Cf.* V. T. H. Delany, "The Custody and Education of Children," 18 *Irish Jurist* 18 (1952).

careful to point out that it was not holding that they "confer any privileged position before the law upon members of the Roman Catholic Church..."

Under Article 42, it is recognised that "the primary and natural educator of the child is the Family," and the "inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children" is guaranteed. It has been held by the Supreme Court[28] that a bill which empowered the Minister for Education to prescribe certain standards of education with respect to children who were not attending public elementary schools, on the basis, *inter alia,* that it did not prescribe *minimum* standards, was unconstitutional. This was based on the reasoning that since the primary duty of providing education rests on the parent, the state must, out of consideration for the parent's rights, prescribe such standards with certainty.

CONCLUSION

The experience gained in the working of the Irish constitution seems to establish that the recital of lists of fundamental rights has very little practical effect, for the meaning to be attributed to them must vary from time to time and, in addition, the relevant provisions are qualified to such an extent that in many cases, the "guarantee" of the right amounts to a mere empty formula.

In the United States, where the question of civil liberties has been canvassed since the foundation of the Union, it is significant to note that the framers of the constitution gave very little consideration to the idea of a definitive Bill of Rights. Towards the end of the constitutional convention, Mason of Virginia "wished the plan had been prefaced with a Bill of Rights, and would second a motion if made for the purpose." He added that a Bill of Rights "would give great quiet to the people."[29] A motion was moved for a committee to prepare such a Bill, but it was defeated. Speaking before the Pennsylvania ratifying convention, Wilson explained the reason for omitting such a declaration, saying "it appeared from the example of other states, as well as from principle, that a bill of rights is neither an essential nor a necessary instrument in framing a system of government, since liberty may exist and be well secured without it."[30]

With Alexander Hamilton, Wilson argued that a Bill of Rights was a dangerous innovation, Hamilton was not of opinion that a provision concerning freedom of the press would confer a regulating power, but he considered it obvious that unscrupulous persons might view such a

28. *In re Article 26 of the Constitution and the School Attendance Bill 1942* [1943] I.R. 334.
29. Farrand, *The Records of the Federal Convention of 1787,* vol. II, p. 587.
30. Elliot's *Debates,* vol. II, p. 435.

restriction as a "plausible pretence for claiming that power."[31] He further argued that Bills of Rights have no place in a government founded upon the consent of the people but only in the relations of King and subjects. The use of the words "We the people" in the preamble, said Hamilton, "is a better recognition of popular rights, than volumes of these aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government."[32]

A number of the American states ratified the constitution without any recommendation as to a Bill of Rights, but others did authorise the adoption of such a declaration, and in accordance with their wishes the first Congress adopted the first ten Amendments. More recently, indeed, the courts in the United States have devoted a considerable amount of time to the consideration of these provisions. After World War II, President Trueman set up a committee to consider the manner in which civil rights in the Union might best be enforced. After a full consideration of the problem, and an enumeration of the shortcomings of the law enforcement agencies in this respect, the committee reached the following conclusion :[33]

> The adoption of specific legislation, the implementation of laws or the development of new administrative policies and procedures cannot alone bring us all the way to full civil rights. The strong arm of government can cope with individual acts of discrimination, injustice and violence. But in one sense, the actual infringements of civil rights by public or private persons are only symptoms. They reflect the imperfections of our social order, and the ignorance and moral weaknesses of some of our people.

The fact that the Fifteenth Amendment to the United States Constitution, guaranteeing racial equality, has been in force since 1870, and that, nonetheless an enormous amount of judicial time is spent in trying to enforce it in the face of an apathetic or hostile public opinion, shows that even a clear and unequivocal statement of rights can have little meaning. When the proposal to adopt a Bill of Rights was debated in the House of Commons of Canada in 1955,[34] it was stated with considerable truth that "the experience in many, if not all, of the countries that have constitutional guarantees, is that it is the state of

31. *The Federalist,* p. 537.
32. *Ibid.*, p. 536.
33. *Report of President's Committee on Civil Rights,* 1947, pp. 133-35.
34. (1955) *House of Commons Debates,* vol. 97, p. 925.

judicial opinion, in the light of the state of public opinion, which determines to what extent constitutional guarantees of human rights and fundamental freedoms are to possess reality and effectiveness," and this is in spite of all the declarations contained in any constitution. This contention is borne out to a remarkable degree by the course of events in the Republic of Ireland, for like all legal texts, the real significance of constitutional guarantees lies in their application.

V. T. H. DELANY. *

* M.A., LL.D. (Dublin); of Lincoln's Inn, King's Inns, Dublin, and the Inn of Court of Northern Ireland, Barrister-at-Law; Lecturer in Law in the Queen's University of Belfast; Editor of the *Irish Jurist.*